

In the Court of Appeals of the State of Alaska

Randell G Jackson,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13406**

Order

Motion to Supplement Trial Court File

Date of Notice: **7/23/2019**

Trial Court Case No. **1HA-16-00022CI, 1HA-12-00043CR**

Randell G. Jackson represents himself in this appeal, which arises from the summary dismissal of Mr. Jackson's application for post-conviction relief. Mr. Jackson has filed a motion requesting to supplement the appellate record. He also requests additional time to file his opening brief.

After Mr. Jackson was convicted in the district court, he appealed his convictions to the superior court. Mr. Jackson now requests that this Court supplement the appellate record in this case with the record from his appeal in Case No. 1JU-13-00902 CI. And while it appears that the transcript of the second trial (except for the jury selection) is already part of the appellate record, Mr. Jackson also asks to supplement the appellate record in this case with the transcript of his first trial in Case No. 1HA-12-00043 CR (Mr. Jackson's first jury was unable to reach a verdict). Finally, Mr. Jackson asks to supplement the record with the entire criminal trial in Case No. 1HA-12-00043.

Mr. Jackson explains that these records "are needed to provide a complete history ... in order to show the many plain errors presented in briefs, memorandum and motions filed over the several years of this [case's] history." But as this Court explained in an earlier order denying a similar request, Mr. Jackson basically contends that he can supplement the appellate record because this Court has the authority to review court

proceedings for plain error. Although an appellate court generally may review a claim that plain error occurred during a trial court proceeding, such a claim of plain error must be based on the existing record in that trial court proceeding. A claim of plain error cannot be based on additional materials that were not presented to the trial court. In other words, Mr. Jackson may raise a claim of plain error in this appeal, but this claim must be based on the record that was presented to the district court in the underlying post-conviction proceedings.

Moreover, in the present appeal, where the district court dismissed Mr. Jackson’s application on its pleadings for failing to plead a *prima facie* case, the only question this Court will address is whether, as a matter of law, the district court erred when it dismissed Mr. Jackson’s application on the pleadings — that is, without holding a hearing. Therefore, this Court is limited to a legal review of the pleadings and any evidence Mr. Jackson provided to the district court in support the allegations raised in his application for relief.

When this Court recently denied Mr. Jackson’s earlier request — to transcribe the voir dire proceedings of the second trial — it did so because Mr. Jackson had not shown that those proceedings had been presented to the trial court. This Court explained that if the voir dire proceedings had not been presented to the trial court, they could not be used to challenge the trial court’s decisions, or used in this appeal to otherwise seek some relief from this Court. (See Appellate Rule 210(a) (“Material never presented to the trial court may not be added to the record on appeal.”))

Additionally, under Alaska Appellate Rules 210(a)(1) and 210(d), the record on appeal is to comprise those portions of the trial court proceedings essential to

the decision of the questions presented in the appeal. Here, the “trial court proceedings” are the proceedings related to Jackson’s application for post-conviction relief. If a petitioner for post-conviction relief wishes the trial court to consider portions of the underlying criminal proceedings, the petitioner must bring those portions to the trial court’s attention. *See Fajeriak v. State*, 520 P.2d 795, 806 (Alaska 1974); *State v. Jones*, 759 P.2d 558, 566-67 (Alaska App. 1988). Otherwise, the underlying criminal proceedings are not part of the post-conviction relief proceedings — and they are therefore not a proper part of the appellate record in the event that either party appeals the trial court’s post-conviction relief decision.

Mr. Jackson in his current request to supplement the record again asks this Court to add material to the appellate record that — with one exception — does not appear to have been presented to, or otherwise relied upon by, the trial court during the litigation of his application. The exception appears to be the record of Mr. Jackson’s appeal in Case No. 1JU-13-00902 CI. When the district court dismissed Mr. Jackson’s present application, that court referred a number of times to the superior court order resolving Mr. Jackson’s appeal. Therefore, because it appears that the record in the Juneau case was available to, or otherwise considered by, the trial court it would not be improper to supplement the current record with the Juneau record.

For this reason, Mr. Jackson’s request to supplement the appellate record is **GRANTED IN PART**. The Appellate Court Records Office shall add the superior court record from Case No. 1JU-13-00902 CI to the current appellate record. The remainder of Mr. Jackson’s request to supplement the record is **DENIED**.

Jackson v. State - p. 4
File No. A-13406
July 23, 2019

This denial is without prejudice and Mr. Jackson may renew his motion if, in fact, Mr. Jackson did present the trial court with the same materials that he is now trying to include in the record on appeal (or if the trial court in any other way indicated that it was relying on these materials).

Because the Appellate Court Records Office must supplement the record, Mr. Jackson's request for an extension of time to file his opening brief is **MOOT**. His opening brief will be due 30 days after the Appellate Court Records Office has completed supplementing the record in this case. If necessary, Mr. Jackson may seek additional extensions.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts



Kyle Roberts, Deputy Clerk

cc: ACRO

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